IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

WP(C).No. 21661 of 2007(D)

OS.265/2000 of PRL.M.C.,ERNAKULAM
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PETITIONER:

DOMINIC JOHN, S/O.ROCKEY, AGED 60 YEARS, KAIPPILLY HOUSE, VALLARPADAM DESOM, MULAVUKAD VILLAGE, ERNAKULAM.

BY ADV. SRI.JACOB CHACKO
SRI.T.X.SHAM JOSEPH

RESPONDENTS:
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1. **TONY PAIVA, S/O.ANDREW SUNNY PAIVA, AGED 37, RESIDING AT PANDARAPPARAMBIL HOUSE, CEMETERY JUNCTION, CHITTOOR ROAD, KOCHI-18.**

2. **JOSEPH PAIVA ALIAS CIRIL, S/O.ANDREW SUNNY PAIVA, AGED 37 RESIDING AT PANDARAPPARAMBIL HOUSE, CEMETERY JUNCTION, CHITTOOR ROAD, KOCHI - 18.**

3. **MR.FRANCINA FERNANDEZ ALIAS VOLGA, W/O.ANTONY FERNANDEZ, AGED 32, RESIDING AT PANDARAPPARAMBIL HOUSE, CEMETERY JUNCTION, CHITTOOR ROAD, KOCHI-18.**

4. **ANTONY GALDEN PAIVA, S/O.ANDREW SUNNY PAIVA, AGED 32, RESIDING AT PANDARAPPARAMBIL HOUSE, CEMETERY JUNCTION, CHITTOOR ROAD, KOCHI-18.**

5. WALTERIN EDVIN PAIVA ALIAS EDISON,
S/O.ANDREW SUNNY PAIVA, AGED 28,
RESIDING AT PANDARAPPARAMBIL HOUSE,
CEMETERY JUNCTION, CHITTOOR ROAD,
KOCHI-18.

6. JOSEPH FRANKLINE, S/O.ROCKEY, AGED 42,
RESIDING AT MADATHUNATTU HOUSE, LIG 125,
GCDA, KOOVAPPADAM, KOCHI-2.

7. JOSEPH IMMANUEL PINTO ALIAS JAIMY,
S/O.ROCKEY, AGED ABOUT 53, DOOR NO.26/1137,
ST.JOSEPH CHURCH ROAD, THEVARA, PINCODE NO.22038
SALIMIYA MAIN PO, KUWAIT.

8. SUGATHAN, S/O.PABBU, AGED ABOUT 36,
KAIPPALLIL HOUSE, VALLARPADOM DESOM,
MULAVUKADU VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT.

9. VINCY JOSEPH, D/O.ROCKEY, AGED 50,
KALLUVEETTIL HOUSE, NAZRETH, KOCHI-2.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 21661 OF 2007

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Dated this the 19th day of July, 2007.

J U D G M E N T

This writ petition is filed challenging the order of the learned Principal Munsiff, Ernakulam. After calling for the records I find the order dated 22.6.07 is as follows:

> "JD3 notice affixed. Sufficient. Called absent. Set exparte. JD4 already exparte. Hence order issued directing the Amin to demolish shed in H2 plot in C.R.(Ext.C4) and give vacant possession to D4 by evicting JD4. Takes steps. Call on 24.6.07."

It is seen that in another order it is written as:

> "Batta paid issue directions to Amin to demolish shed H2 plot in C.R.(C4) by evicting JD4".

I think there is some mistake committed by the learned Munsiff in passing this order. I had gone through the certified copy of the decree and as per paragraph 4 of the decree the direction against 4th defendant is as follows:

> "That the 4th defendant is directed to vacate the shed in the plaint scheduled property within one month from this date, failing which the plaintiff is permitted to execute the decree as against him".

Paragraph 5 reads as follows:

> "That the plaintiff is permitted to recover possession of the plot H2 in plot B of Ext.C4 with the assistance of the Court, if the 1st defendant fails to surrender the same also within one month from this date."

Therefore, a reading of the decree would go to show that as far as plot H2 in Ext.C4 is concerned the direction relates to the first defendant and the direction to the 4th defendant is embodied only in paragraph 4 of the decree. But by the present order it is not clearly readable. I find a direction is given to the Amin to demolish shed H2 plot in C.R.(Ext.C4)by evicting JD4. H2 plot relates to D1. So there is some confusion in the order passed by the Court. Therefore, I set aside the order passed by the learned Munsiff and direct him

to pass appropriate orders as per the decree after hearing both sides. Till such time the order which is under challenge shall be kept in abeyance for demolition.

The Registry is also directed to send back the files.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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